No. 286.

Brf. of Zacharie for D. C.

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SUPREME COURT OF THE UNITED STATES.

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OCTOBER TERM 1899.

COMPAGNIE FRANÇAISE DE NAVIGATION A VAPEUR

versus

STATE BOARD OF HEALTH ET ALS.

On Writ of Error from Supreme Court of Louisiana.

BRIEF OF DEFENDANTS IN ERROR.

F. C. ZACHARIE,
Attorney for Defendants in Error.

Philippe's Printery, 614-616 St. Louis Street.

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SYLLABUS.

The contemporaneous history of Act 192 of 1898, shows the object and purposes of the clause in Section 8, in excluding by quarantine regulation immigrants from entering territory infected with contagious disease, and also its wisdom and necessity.

A clause in the title, of an act organizing health boards, State and local, setting forth as one of its objects "to define the powers, duty and authority of said boards" is sufficient to cover provisions, in the body of an act, giving

powers germane to such boards, and is therefore not repugnant to the Coustitution of Louisiana of 1898, Art. 31. Cooley Cons. Lims., 173; H. L. A. 298; 33 A. 783; 35 A. 1141; 37 A. 188; Eng. and Am. Encyc. of Law, vol. 23, p. 229 et seq.; Endlich on Int. of Statutes, Section 59.

Section 8 of the Act of 1898 relates exclusively to quarantine regulations, maritime and land, external and extra State, concerning intercourse with infected and quarantined portions of the State, and the clause about immigrants is to be construed in connection with the whole context of the Section.

The repealing clause of the Act repeals all prior laws and parts of laws inconsistent with its provisions, although those prior laws are not mentioned by title or number. Cooley on Cons. Lims., p. 183; 41 Alabama, 9, 14; 47 Missouri, 29 Michigan, 236; 1 Nebraska, 182; 46 Missouri, 288; Eng. and Am. Encyc. of Law, vol. 23, p. 283 and authorities in note.

Quarantine laws of the various States are consistent with the Constitution of the United States, although they affect to a greater or less degree foreign commerce. 9 Wheat. 189, 203; 92 U. S. 275; 92 U. S. 269; 124 U. S. 474; 95 U. S. 465; 125 U. S. 493; 135 U. S. 112; 115 U. S. 661; 113, 27, 31; 140 U. S.; Miller's Lectures on Constitution, 480; 118 U. S. 463.

The XIV Amendment to the Constitution of the United States does not interfere with, impair or abolish the exercise of the legitimate police powers of the States. Parker and Worthington, Section 15, and authorities cited in note; Prentice, Police Powers, p. 27 and notes.

No treaty with a foreign power can relieve foreigners and aliens, whether immigrant or not, from conforming to the police laws of a State.

Quarantine laws of the States are not abolished or modified by the U. S. Immigration or other laws of the Federal Government. Prentice on Police Powers, 419.

To judge of the validity of a quarantine law, as of any other police law of a State, the only question to be decided is whether the Act is a reasonable exercise of the power and not one for ulterior and different purposes. Prentice on Police Powers, 105; Parker and Worthington's Public Health and Safety, Section 50 et seq. If it is reasonable it is not unconstitutional and must stand.

PLEADINGS.

This is a suit brought, originally, by a French Steamship Company against the Louisiana State Board of Health and the individual members thereof, for Twenty-Five Hundred Dollars, ($2,500.00) damages with legal interest from judicial demand, with a reservation to claim additional damages. The supplemental petition claims additional damages to the amount of Eight Thousand Five Hundred Dollars, ($8,500.00), making in all a claim of Eleven Thousand Dollars, ($11,000.00), as damages with legal interest from judicial demand. The basis of the demand is that defendants unlawfully prevented one of their steamships, namely the "Brittania," from landing, on the 29th of

September, 1898, 408 Italian immigrants from said ship in any portion of the State of Louisiana, which was then infected with yellow fever. The petition alleges that this action of defendants was based on the following portion of Section 8, of Act 192 of 1898:

"The State Board of Health may prohibit the introduction into any infected portion of the State persons acclimated, unacclimated, or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease," and on the following resolution adopted by the Board of Health on September 29th, 1898:

"Resolved, that hereafter, in case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers, or others shall be allowed to enter said town, city or parish, so long as said quarantine shall exist and that the President of the Board shall enforce this resolution."

The petition avers that the portion of the law cited "does not confer upon the said Board of Health the right to exclude healthy persons from coming from various foreign ports into the port of New Orleans as pretended by them," and if it does, that it is "in contravention of Article 1st, paragraph 8, section 3rd," of the Constitution of the United States relating to the regulation of commerce. In the supplemental petition it is further stated that said action of the Louisiana State Board

is in violation of the treaties between the United States and Italy, and further "in violation of the laws of the United States and the rules and regulations made in pursuance thereof relating to quarantine, at and immigration from foreign countries into ports of the United States; and especially Acts of Congress approved February 15th, 1893, and the rules and regulations made in pursuance thereof; and Acts of Congress of March 3rd, 1893, August 3rd, 1882, and June 26th, 1884, and the rules and regulations made in pursuance thereof; and of the treaties now existing between the United States on the one part, and the Kingdom of Italy and the Republic of France on the other part." An injunction was prayed for, which demand on the trial of a rule *nisi* and argument was refused by the Court *a quâ*. To plaintiff's petition defendants filed the peremptory exception of no cause of action, which exception, after hearing argument of counsel, was maintained and the suit of the plaintiff company dismissed, at its cost, by the Judge *a quo*. From that decision and decree an appeal was taken by plaintiffs to the Supreme Court of Louisiana which affirmed the judgment of the Lower Court from which this writ of error was taken to this Honorable Court.

ARGUMENT.

ORIGIN OF THE LAW.

It is a maxim of law that, in the interpretation and application of the terms of a statute, there

should be taken into consideration the contemporaneous history and circumstances which induced the Legislature to pass the law, in order to determine what is the object of the law and what evil, if any, its provisions were intended to remedy and obviate. It is well known, and it is a matter of public notoriety, that there are introduced annually into the State of Louisiana large numbers of European immigrants, and that the great bulk of these imported immigrants arrive here in mid-summer or in the early fall to meet the demand for labor, at that season of the year, for taking off the annual crops. During the prevalence of an epidemic of yellow fever in the city of New Orleans and other portions of the State in 1897, there arrived at the mouth of the Mississippi River a large number of Italian immigrants destined to be landed at New Orleans. The then Board of Health excluded those immigrants on the ground that their introduction would tend to increase and spread the then prevailing epidemic.

The writer of this brief, although not then the Attorney of the Board, was consulted by its members as to the legality of that exclusion. From his long prior experience as Attorney of the Board, he gave a verbal opinion that under the existing laws the Board did not have that power. While he had no doubt that under a plenary power to establish quarantine the right would exist, he was of opinion that under Acts of 1855, '58, '70, '76 and '77, the provisions of those Acts conferred no such plenary

power, but especially provided that healthy persons coming from non-infected ports on vessels in proper sanitary condition and with clean bills of health should be admitted to pratique and to land after satisfactory inspection. Those statutes only empowered the then Board of Health to enact the necessary rules and regulations to *carry out the provisions therein contained.* However, the then Board of Health, acting on the advice of its then Attorney and other Attorneys-at-law, excluded the immigrants, deeming that the great necessity and the rules of "*salus populi suprema lex*" overrode the strict technical and verbal interpretation of the Acts. When the writer drew up Act 192 of 1898, the war with Spain was then being waged, and, to meet the additional emergency of large bodies of troops coming into the State, as well as the introduction of numbers of immigrants who might enter portions of the State which might become infected as in 1897, the clause in Section 8 was inserted in the Act 192 of 1898 to meet those conditions, should they unfortunately eventually arise as they actually did subsequently. In our opponents' brief, they, for the first time, argue fully a point which they did not press in the Lower Court, and that is, that the clause in the Act did not and does not cover or authorize the action taken by the Board in adopting the previously quoted resolution. It is difficult to realize how such a contention can be made on any plausible ground. That clause authorizes the State Board of Health,

in its discretion, to prohibit the introduction into any infected portion of the State of persons acclimated or unacclimated, or said to be immune, when, in its judgment, the introduction of such persons would add to or increase the prevalence of the disease. The use of the words "discretion" and "judgment" shows plainly that the Legislature intended to, and did, entrust to the State Board the exclusive determination of the time when in its judgment and discretion it should become necessary to exercise the quasi judicial power vested in it by the Act. It would seem therefore that there can be no serious question as to the rightful exercise of the power by the Board under the very letter and intent of the statute. Now as to the manner of the exercise of the power it seems equally clear that the method adopted is in strict conformity with the letter and spirit of the law. The prohibition in the statute applies to the "introduction into any infected portion of the State of persons acclimated, unacclimated, or said to be immune." This language is ample and broad and covers fully the introduction of any persons into any infected portion of the State, whether they come from other portions of the State or whether from beyond the boundaries of the commonwealth. No other construction or interpretation can be reasonably placed upon the language.

What is the object and intent of the granting of this power to the State Board? It was to authorize the Board to prevent the addition of fresh

fuel to the flames of an epidemic prevailing in any portion of the State. It mattered not whence the persons came, whether from an uninfected portion of the State of Louisiana, or from another State of the Union, or from European or other foreign countries, the object being that these persons should not be admitted, because they were liable to contract the disease, and, having contracted it, to communicate it to others within the infected district and thereby add to or increase the prevalence of the disease. Perhaps no stronger case could be presented than the one at bar as illustrative of the necessity of such a provision. Here were 408 Italians, men, women and children, leaving the port of Palermo in Sicily on the 2nd day of September, 1898, arriving at the mouth of the Mississippi River on the 29th day of September, 1898. They had been subjected to a voyage of 27 days, almost in mid-summer, under the semi-tropical sun of the Mediterranean and the South Atlantic. Cooped up in the steerage during all this time; fed upon coarse ship's rations; furnished with water not of the best; crowded together, and most of them, if not all, debilitated by sea sickness and confinement. This mass of people were to be injected into a city in which yellow fever was raging, in a prostrated physical condition most susceptible of contagion, and of a class of people not only peculiarly liable to contagion, but one to which the prevailing disease, when contracted by them, was particularly fatal. They came from a

place on the latitude and on the isothermal line of North Mississippi and South Tennessee to a place like New Orleans, which is situated on a degree of latitude which runs through the northern portion of the Desert of Sahara and the isothermal line of which cuts through the City of Cairo in Egypt, or a few miles north of it. On their arrival here it is the custom of these people to herd together in the purlieus of this city, living two or three families in a room, utterly regardless of hygienic and sanitary laws — a people of all others who never call for medical assistance until the patient is ready to die, and then, in their case more than in any others, constant and systematic concealment is practiced, and every resistance and obstacle is thrown in the way of the sanitary authorities and proper sanitation. With this bare statement, we think that we can safely leave the question with this Honorable Court as to whether this law is a wise and salutary exercise of the police power in the preservation of the public health of the State, as well as the question as to whether this case is covered by the clause of the Act and also the issue as to the prudence and wise exercise of the power by the State Board of Health in this and all similar instances. Our opponents, in the course of their argument in the Lower Court, seemed to grant the propositions that the Courts could not review the exercise of the power by the General Assembly except in so far as to determine whether it was a reasonable exercise of the power, and they seemed to admit also that

the discretion, or the exercise of it by the Board, could not be reviewed by the Courts except in so far as to judge whether the power had been exercised as a reasonable police regulation and according to the terms of the statute.

To our surprise, for the first time and only in the Louisiana Supreme Court, as a desperate resort, they now urge that the clause now under discussion is obnoxious to Article 31 of the State Constitution of 1898 in the following respects: a) that this clause is not covered by the title of the Act; b) that the clause under discussion is to be construed together with the context of Sec. 8 of the Act and is not to be interpreted as applying to maritime quarantine against foreign vessels or ports; c) that the power advocated by us is not distinctly confined by the language of the text; (d that it is not to be construed as repealing Section 3045 R. S. and Act 68 of 1876. We propose to discuss the objections *seriatim* in the order in which our opponents placed them —

(a) TITLE.

The fourth clause of the title is "*to define the powers, duty and authority of said Board.*" Here is broad, full, and comprehensive language giving, in a general sense, the plain indication that the body of the Act will set forth *all* the "powers, duty and authority" of the Board, and it covers in its scope all things incidental and necessary to the proper protection of the health of the State, such

as may be set forth in the body of the Act. While the title also contains the clause to authorize "a maritime and land quarantine against places infected with such diseases," the latter in no wise controls, limits or circumscribes the broad and general terms of the fourth clause, by particularizing the quarantine to prevent the *introduction* of contagious diseases. It in no wise affects the "power," "duty" and "authority" of the Board to prevent the spread of the disease when once introduced by quarantining against persons coming into an infected district.

Cooley's Constitutional Law, p. 173, lays down the doctrine that it is sufficient if the title fairly indicates the purposes of the Act, and he cites decisions to that effect, among others one sustaining an "act to establish a police government for the City of Detroit" as being sufficient in its title to cover "all matters properly connected with the establishment and efficiency of such a government, including taxation for its support and Courts for the examination and trial of its offenders," which, as he says, "might be constitutionally included in the bill under its general title," and cites a number of cases in support of his text, among which is 4 L. A. 298. See also 33 A. 783; 35 A. 1141; 37 A. 188; Eng. and Am. Encyc. of Law, vol. 23, p. 229 et seq., all of which support the doctrine that there is a sufficient compliance with similar constitutional provisions, if the title indicates the general purpose of the law, without speci-

fying in detail each particular provision of the Act. This must necessarily be the case in nearly all laws of a complicated character, and especially so in health matters, as, were it otherwise, the titles of such Acts would be construed to mention all the different details included in them, and they would thus become a synopsis, abstract or index as long as the moral law. Thus the title to the Act No. 80 of 1877, only reads, in reference to quarantine, "to reorganize and render more efficient the Board of Health of the State of Louisiana; to define its powers and prescribe its duties and those of quarantine and other officers under its control," the whole title being only six and a half lines, and yet the body of the Act embraces fourteen sections, covering three pages in the bound volume, and setting forth a multitude of details. Indeed, the quotation from Endlich in our opponents' brief covers the point here exactly, for the clause under discussion here can and must be naturally "so construed as to bring it within the title" and without doing positive violence to the letter. We think then, that your Honors must conclude that the clause under discussion is fairly included and embraced, and indicated in the title, as one of the "powers" and "duties" mentioned in the title. But our opponents say that—

(b) THE CLAUSE MUST BE CONSTRUED IN CONNECTION WITH THE BALANCE OF SECTION 8 AND THAT IT

DOES NOT APPLY TO MARITIME QUARANTINE:

In order to test the truth of this contention, it is necessary to analyze briefly the body of the Act.

Sections 1 and 2 relate to the organization of the Board of Health, its officers, etc.

Section 3 relates to the powers and duties of the State Board, and gives it "authority and jurisdiction now possessed by the existing State Board of Health *under present laws now in force*, EXCEPT IN SO FAR AS MODIFIED AND CHANGED BY THE PROVISIONS OF THIS ACT. It shall have exclusive jurisdiction, control and authority over maritime quarantine, within the State, as now provided by existing laws of the State. It shall have supervisory power over land quarantine, and OVER THE CARE AND CONTROL OF INFECTIOUS DISEASES WITHIN THE STATE IN ORDER TO ACCOMPLISH THE SUBSIDENCE AND SUPPRESSION THEREOF, AND TO PREVENT THE SPREAD OF THE SAME. SUCH SUPERVISION AND CONTROL SHALL BE EXERCISED IN THE MANNER HEREAFTER LAID DOWN IN THIS ACT."— The italics and capitals are our own.

Thus it will be seen: 1st. That the powers granted are not confined to those under existing laws, but are extended to *such modifications and changes* as are incorporated in the Act; 2nd. It is only in regard to maritime quarantine and infec-

tious diseases that the word "control" is used, and in the last clause cited this "control" of maritime quarantine and contagious disease is to be "exercised in the manner hereinafter laid down in this Act"; 3d. The Board is to have "the care and control of infectious diseases within the State, in order to accomplish the subsidence and suppression thereof, and to prevent the spread of the same." Construing these provisions together, is it not plain that the Act in so many words extends the powers of the Board beyond those under existing laws, and points out that the Act in its subsequent provisions would give new and fuller powers? We think that it plainly does, and that this is obvious from the most cursory reading of the Section.

Sections 4, 5 and 6 relate to local boards and their powers, among which is the establishment of land quarantines, under the supervision of the State Board. Thus far these Sections, in relation to maritime quarantine, have only embraced the question of the *introduction or importation of contagious or infectious diseases.*

Sec. 8 now takes up the question as to the means to be employed *after the introduction or importation of the disease*, and proceeds to define the duties and powers of both the State and local boards as to localities actually infected. THE WHOLE OF SECTION 8 IS CONFINED EXCLUSIVELY TO THIS BRANCH, THAT IS, THE PREVENTION OF THE SPREAD OF THE DISEASE. It is in this connection,

and as strictly germane to this particular subject matter, that the clause under discussion follows logically and consistently and in its proper place, as one of the means of preventing the spread of the contagious disease either within the limits of the quarantined district, or beyond its boundaries. This is plainly one of the methods to which Section 3 refers, to be "hereinafter laid down in this Act."

This analysis of the body of the law is a clear exposition of the confection of the law, which we claim has been carefully and artistically drawn and is not open to the objection urged by our opponents. Thus weighed and considered, together with the history of the law, it seems to us, with all due deference to the sagacity of our opponents, to be impossible to narrow down the meaning and application of the clause to "quarantines of, by and between the cities, towns and parishes of the State." — On the contrary, the language is broad and full and applies as well to the entrance from points outside of the State into infected portions of the State, as it does to passage from the uninfected portions of the State into those quarantined. The whole context of Section 8 indisputably points to this, and as a matter of history the clause was chiefly and principally inserted to meet just such a case as the present one, the prototype of which had occurred in 1897, and had called pointedly to the legislative mind the necessity of just such a provision.

(c) But it is said that THE POWER EXERCISED BY THE BOARD IN THE INSTANT CASE IS NOT DISTINCTLY AND EXPRESSLY CONFERRED.

We do not consider it worth our while to spend words, or to vex the patience of this Honorable Court, in following the specious argument of counsel on this point through all its details. A bare reading of the clause in question carries the conviction that it means precisely what the State Board understood it to mean, and that their action based on it is in strict conformity therewith. The English language, in our opinion at least, could not make its meaning plainer. No sophistry or labored argument can do away with its plain terms and its obvious intent, spirit and apposite application to the case in hand.

(d) Our opponents also urge that ACT 192 OF 1898 DOES NOT REPEAL SEC. 3045 R. S. AND ACT No. 68 OF 1876, BUT IS TO BE CONSTRUED AS CONTINUING THEM IN FORCE, AS IT DOES NOT ESPECIALLY REPEAL THEM BY TITLE OR NUMBER.

This proposition is sought to be based on the language of Section 9 of the Act of 1898. That Section repeals all laws and parts of laws in conflict with, inconsistent with, or superceded by the provisions of this Act. "But all laws," etc., now existing and not in conflict with, or inconsistent with, or superceded by, the provisions of this Act. are continued in full force, and this Act shall not

be construed or interpreted so as to deprive the State Board of Health or the local Board of any powers or authorities, *except in so far as these powers and authorities may be modified or changed by the provisions of this Act.*" (The italics are our own.) It then goes on to repeal certain Special Acts, by naming them. And yet, in the face of these plain provisions, it is seriouly contended that the Section of the Revised Statutes and the Act of 1876 are not repealed by the Act of 1898, in so far as the latter varies from the former. Of course, it is elementary that where a new Act adds to, or varies from, a former Act, no express mention of the prior laws need be made in the later Act. Cooley on Cons. Lims., p. 183; 41 Ala., 9; 14 Mich., 236; 1 Neb., 182; 47 Mo., 29; 46 Mo., 288; Eng. and Am. Encyc. of Law, vol. 23, p. 282, and authorities there cited.

We have forborne from following and discussing the authorities cited by our opponents on these various abstrusely technical points, as we have failed to discover their application, in any respect, to the points hereinbefore discussed.

Their chief and main reliance is on —

I.

THE UNCONSTITUTIONALITY OF THE ACT AS BEING IN CONFLICT WITH THE CONSTITUTION OF THE UNITED STATES AND THE LAWS AND TREATIES THEREUNDER.

It is urged by our opponents, that the State Statute is in conflict with Sec. 8, Art. 1, of the Constitution of the United States, as they allege that "it is an attempted regulation or prohibition of foreign commerce." Under this heading in their brief they proceed at some length to argue that, in interpreting this Article, the Supreme Court of the United States has decided that in many matters of trifling importance, and local in their character, which directly or indirectly affect foreign commerce, "while Congress undoubtedly had the right to legislate on such subjects to the exclusion of all State legislation," yet "that the States should be *permitted to legislate in reference thereto in the absence of legislation by Congress.*" We italicise the last clause to show that our adversaries are indirectly attempting to establish the proposition that a State's police power of establishing quarantines to protect the health of its citizens is purely permissive, and not one of the reserved powers of the States. Among other cases, they cite as the leading case supporting that doctrine: Gibbons vs. Ogden, 9 Wheat., 189. In that case, in which Chief Justice Marshall, the most extreme of all Federalists and Centralizationists, delivered the opinion of the Court, says on p. 205, discussing "the Acts of Congress passed in 1796 and 1799, empowering and directing the officers of the general government to conform to, and assist in the execution of the quarantine and health laws of a State, proceed, it is said, upon the idea that these

laws are constitutional. It is undoubtedly true that they do proceed upon that idea, and the constitutionality of such laws has never, so far as we are informed, been denied. But they do not imply an acknowledgment that a State may rightfully regulate commerce with foreign nations or among the States; for they do not imply that such laws are an exercise of that power, or enacted with a view to it. On the contrary, they are treated as quarantine and health laws, are so denominated in the Acts of Congress, and are considered as flowing from the acknowledged power of a State, to provide for the health of its citizens." So, on p. 203, the Court said, speaking of State inspection laws: "They form a portion of that immense mass of legislation, which embraces everything within the territory of a State not surrendered to the general government; all which can be most advantageously exercised by the States themselves. Inspection laws, *quarantine laws*, *health laws of every description*, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass." (The italics are our own.)

Again a quotation is given from Chief Justice Fuller's opinion in Leisy vs. Hardin, 135 U. S. 112, and in the very language quoted the learned Chief Justice included among State Statutes which have been sustained as "police or health laws" "subjects of a kindred nature not strictly of com-

mercial regulation." That the able Chief Justice himself coincided in opinion with the established jurisprudence of the Court on this subject is plain, when we consider that, in a subsequent case, 140 U. S. 554, he broadly said, as the organ of that august tribunal, in a unanimous opinion of all the judges: "The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order and prosperity, *is a power originally and always belonging to the States not surrendered by them to the general government nor directly restrained by the Constitution of the United States* AND ESSENTIALLY EXCLUSIVE. *And this Court has uniformly recognized State legislation* LEGITIMATELY FOR POLICE PURPOSES, AS NOT IN THE SENSE OF THE CONSTITUTION NECESSARILY INFRINGING UPON ANY RIGHT WHICH HAS BEEN CONFIDED EXPRESSLY OR BY IMPLICATION TO THE NATIONAL GOVERNMENT." (The italics and capitals ore our own.)

Mr. Justice Miller's lectures on the Constitution are also quoted from by our opponents. It is plainly obvious that Judge Miller is not speaking of those police powers such as quarantine, which were never granted to the Federal Government, but were reserved to the States. On p. 480 of his work he says, under the heading of "Quarantine": "States may enact quarantine laws which amount

to a regulation of commerce, though not intended to be so, and maintain them until Congress acts in the matter by covering the same ground, or by forbidding State legislation."

In Chy. Lung vs. Freeman, 92 U. S., 275, also cited by appellants, it is only necessary to quote the syllabus, which correctly digests the decision, to show that it has no application to the case at bar: "But the features of the Statute are such as to show very clearly that the purpose is to extort money from a large class of passengers, or to prevent their immigration to California altogether." Thus the Court decided that the Statute was a palpable abuse of the police power, not for the purpose of protecting the health or morals of the State of California, but for the purpose of deriving revenue. So in Henderson et al. vs. Mayor, 92 U. S., 269, it was decided that the Statutes of New York called in question, were not a proper exercise of the police power but "a tax on the ship owner for the right to land such passengers, and in effect, on the passenger himself, since the ship master makes him pay in advance as part of his fare." — Syllabus No. 5.

So in 124 U. S., 474, also cited by appellants, the Court said, quoting with approval from 93 U. S., 99: "In conferring upon Congress the regulation of commerce it was never intended to cut off the States from legislating on all subjects relating to health, life, and safety of their citizens, though the legislation might indirectly injure the commerce

of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. So, in 95 U. S., 465, the Court decided a Statute of Missouri unconstitutional, which excluded all Texas cattle from the State of Missouri during eight months of each year, the Court saying, p. 470: "The object and effect of the Statute are to obstruct interstate commerce, and to discriminate between the property of citizens of one State and that of citizens of another State;" and on p. 473: "Tried by this rule, the Statute of Missouri is a plain intrusion upon the exclusive domain of Congress. *It is not a quarantine law.* It is not an inspection law." Again the Court said: "The police power of a State can not obstruct foreign commerce or interstate commerce *beyond the necessity of its exercise.*"—The italics are our own. Thus the converse of the proposition follows that the police power of a State *can* obstruct foreign commerce or interstate commerce *within the necessity of its exercise.*

In the case of Bowman vs. Chicago Str. R. Way Co., 125 U. S. 493, cited by appellants, the question was in regard to a law of Iowa to prevent intemperance in the use of intoxicating liquors, which was held to be a regulation of commerce and void. The Court is particular in differentiating the issue from the proper exercise of the police power of a State, for on page 493 it guardedly

said: "It is not an inspection law; *it is not a quarantine law.*" (The italics are our own.) It thus is distinctly intimated that were the Statute *a quarantine law*, it would not be obnoxious to the provision of the Constitution in regard to the regulation of commerce.

So in the quotation in the brief of our opponents, the Court says: "The States did not surrender to the National Government the control each of its internal commerce nor the police power vested in them as sovereigns to be exercised for the safety, health and welfare of their citizens.

* * * * It may pass such reasonable laws as it may deem fit for the protection of health and safety of its citizens and their property * * and in the exercise of the right of self-defence vested in every sovereign power *exclude from its borders persons or property which by nature or disease are liable to injure the health or morals of its people. The exercise of this right, while it may, in a measure, bear upon commerce, is nevertheless considered not such a regulation or interference with commerce as to invade the domain of the National Government, or conflict with any of those powers with which it was intended to invest.* Bowman vs. Railway Co., 125 U. S. 465; Leisy Hardin, 135 U. S. 112." (The italics are our own.) And in 7 Howard, 424, also cited by our opponents, speaking of the police powers of the States, the Court said: "Among them qualified rights to protect their inhabitants by quarantine

from disease; imperfect and qualified, because the commercial power which Congress has is necessarily connected with quarantine. And Congress may, by adoption, presently and for the future, provide for the observance of such State laws, making such alterations as the interests and convenience of commerce and navigation may require, always keeping in mind that the great object of quarantine shall be secured."

In 115 U. S. 661, also cited by our opponents, the Court says "that there is a power, sometimes called the police power, which has never been surrendered by the States, in virtue of which they may, within certain limits, control everything within their respective territories, upon the proper exercise of which, under some circumstances, may depend the public health, the public morals or the public safety, is conceded in all the cases. Gibbons vs. Ogden, 9 Wheat. 1, 203. In its broadest sense, as sometimes defined, it includes all legislation, and almost every function of civil government. Barbier vs. Connolly, 113 U. S. 27, 31."

We have thus reviewed all the authorities cited against us, and we think that all of them are in our favor. We could quote at length from many others not mentioned by our adversaries, but we content ourselves in referring only to Morgan vs. Louisiana, 118 U. S., 463, where all the antecedent cases on this point are reviewed and the prior doctrine of the Court is reaffirmed.

In 118 U. S., an intimation is thrown out by

the Court as in Peets vs. Morgan, that the Federal Government might assume exclusive jurisdiction of quarantine. The most cursory examination of thoses cases, however, will show that these expressions used *arguendo* are *obiter dicta*, as that question was not before the Court in either case, and if it were, the emphatic declaration on this subject, in 140 U. S., has overruled any such doctrine.

The strained conclusion which our adversaries seem to draw from all these authorities and decisions is a strange *non sequitur*. It is "that which does not belong to commerce, is within the police power of the State; that which does not belong to commerce, is within the exclusive jurisdiction of Congress." Although somewhat obscurely expressed by the use of the indefinite word "belong," they evidently mean that the States cannot in the exercise of police power affect or interfere, directly or indirectly, with extra-State or foreign commerce. This would lead to a *reductio ad absurdum*. Quarantine, interstate or maritime, against foreigners, must necessarily affect and interfere to a greater or less degree, either by inspection, detention, disinfection or exclusion, with commerce from other States or foreign nations, therefore say our opponents, the States have no right, in the exercise of their police power, to establish any quarantine at all against other States of the Union or foreign nations. And yet, as we have shown, the whole current of authorities already cited establish

that the power of quarantine is one of the police powers of the States, and although the exercise of it may, and actually does, in many instances, interfere with commerce, domestic and foregin, such health regulations are not to be regarded as regulations of commerce, and are not in violation of the Constitution of the United States. This seems to be conclusively and permanently established, beyond serious question.

II.

Plaintiffs' and appellants' counsel have interpolated into their briefs and arguments in the Supreme Court, for the first time, a constitutional objection to the clause on the Statute, *not contained in or covered by their pleadings.* In neither their petitions nor in their argument in the Court of the first instance was any mention made of the power granted in the Act being obnoxious to the Fourteenth Amendment in depriving plaintiffs and appellants of their life, liberty or property without due process of law." It was sprung there, in that Court, for the first time, and is *clearly inadmissible under these circumstances.* In the lower Court the only constitutional provision discussed was the commerce clause. However, this new constitutional objection, even if it were admissible, could not prevail. Neither these foreign immigrants nor this alien Steamship Company have been deprived of their lives, liberty or property, without due process of law. In a certain sense, they have been

restrained in their liberty, and the free use of their property has been limited and abridged, but only to the limited extent that the legitimate exercise of the State's police power has controlled them for the preservation of the public health, and to prevent the spread of a dangerous and pestilential disease, and even from the contraction of the contagion by themselves. The Fourteenth Amendment has never been and never can be so construed as to abolish the necessarily summary methods of police protection, especially that branch which covers public health and sanitary safety. The construction of our levees, and the invasion of rights of private property without legal process is an example of the exercise of a branch of this power not subject to the constitutional objection. The summary demolition of private or public buildings to stop the spread of a conflagration is another. The condemnation and removal of unsafe buildings is another. There are many other cases of similar character, which will recur to almost any mind on a moment's reflexion, in all of which legal process is not requisite. When we turn to sanitary or health law, numbers of other examples immediately suggest themselves. For instance, the enforced isolation of patients sick with contagious diseases; the confinement in the infected dwellings of persons who have been in contact with such sick persons; the enforced vacation of unsanitary buildings; the invasion of premises and our most private places for the purpose of

sanitary inspection by health officers; the prompt suppression and abatement of nuisances, dangerous to the public health, by the sanitary authorities; the enforced removal, in many States, of persons sick with contagious diseases to special hospitals; the destruction of effects affected with contagious diseases; the killing of live stock affected with contagious diseases; the killing of animals having rabies or hydrophobia; the fumigation and disinfection of infected premises; compulsory vaccination in some States, and in others a denial of public school privileges to unvaccinated children; the inspection of food products, and the destruction of decayed or tainted provisions intended for human consumption; the inspection of coal oil and petroleum and the branding of unsafe, dangerous or explosive illuminating fluids of that description; the whole system of quarantine itself, whether maritime or land, foreign or domestic, intra State or inter State, all these, and many more might be added, are cases in which no process of law is required. If the clause under discussion here be unconstitutional, as being in conflict with the XIV Amendment, then all the laws we have named are equally so. Were such legal process required, the very objects had in view would be defeated in these police laws. The very nature of the exigencies and emergencies demanded in such cases is such as to render all legal process an impossibility in most if not all of them. The principle of *salus populi suprema lex* governs in this regard *ex necessitate*

rei, and commands celerity, dispatch, promptness, and effectiveness, in immediately applying the summary remedies now provided by law. All citizens, aliens, denizens, immigrants, residents, transient passengers and all other persons of any description are alike subject to some of these summary invasions of their right, liberty and property, for the universal common good and general sanitary and hygienic welfare. No alien immigrant or foreign corporation possesses any immunity from the operation of these laws in their property or person any more than an American citizen or a resident of the State. So patent is this elementary principle of sanitary law that it may be regarded as a truism, which needs no citation of authority to support it, other than that of common sense and reason. Without it, civilized society could hardly exist. To abolish it and to compel the resort to the slow process of the law would be to remand us to a state of semi-savagery, which would compel large communities to resort again to a nomadic life like the tribes of the desert to escape from their own filth and the diseases engendered thereby.

Parker and Worthington, Section 15 of their Work on Public Health and Safety, say, speaking of the Fourteenth Amendment: "It has been frequently adjudged to be the settled doctrine of the United States that this amendment was not designed to interfere with or in any degree to abridge or impair the exercise of the police power of the States," and in the notes they cite as supporting

their text, 140 U. S., 545; 127, id., 678; 123 id., 623; 113 id., 27; 118 id., 356; 30 Fed. Rep., 51; 39 Conn., 63; 104 N. C., 714; 111 U. S., 746. See also Prentice, p. 27, on this point with authorities.

III.

Our opponents, however, urge that this statute is IN CONFLICT WITH CERTAIN LAWS AND TREATIES OF THE UNITED STATES, namely, the treaties with the kingdom of Italy and that with the republic of France. We hardly think it necessary to cite authorities or precedents to show that treaties with foreign governments do not abrogate the police and quarantine laws of the States, nor divest the States of the power of protecting their people in their health and safety.

The police power of the States under the decisions of the United States, among which is the leading case of Stone vs. Mississippi, is inalienable. Foreigners and aliens bound for and coming into a State are as much subject to the police power of quarantine as the citizens of the States. All that the treaties guarantee them is protection, subject to a compliance with all police laws. No treaty in any civilized States could or does grant them any immunity from police laws. No treaty with any civilized State could or does attempt to grant them any immunity from police laws. In regard to the immigration laws, Prentice in his

work on the Police Power, p. 419, says: "The quarantine laws established by the different States had always been recognized, and the immigration laws had not diminished their effectivity. The Supreme Court held that the matter is one in which the rules should govern, may in many respects be different in different localities, and for that reason be better understood and more easily establishsd by such authority." Authorities in note 1 are cited in support of the text.

In the case 57 F. R. 279, the Court said, speaking of the detention of healthy persons, by the States, who had already passed the U. S. authorities and held their health certificates, and considering the claim that the State's statute violated treaties with foreign powers: "We find nothing in any existing treaty with Norway or Sweden in conflict with the institution or enforcement by any one or more of the States of the Union of the quarantine regulations."

But it is said that the Federal Government has assumed control of quarantine by the Act of Congress of February 15th, 1893, and that the State's Statute under discussion here conflicts with the Federal Statute, and must therefore yield its validity. The Federal Statute provides just the contrary, for in Section 3 it is provided that the Federal authorities shall "co-operate with and aid State and municipal boards of health in the execution and enforcement of the rules and regulations of such boards," and in Section 1 of

the Act it is made the duty of "all vessels to act in accordance with the provisions of this Act and with such rules and regulations of State and municipal health authorities as may be made in pursuance of, or consistent with, this act." So State quarantine acts are not abolished by the Federal Statute, but the Federal Government only seeks to supplement them, and aid and co-operate in their execution.

In the course of our oral argument, in the Supreme Court of Louisiana, His Honor, Mr. Associate Justice Miller, propounded the question as to whether the exclusion of healthy immigrants could be considered as an exercise of the quarantine power properly and strictly speaking. To which we answered that, in our opinion, it was. The word "quarantine" is used by the commentators both in the sense of preventing the admission of persons affected with contagious diseases, and also in the sense of "isolation" and preventing access of healthy persons to persons sick with contagious diseases. Parker and Worthington, p. 91, use it in the latter sense, saying "and to prevent the spread of contagion by providing for the regular isolation or domestic *quarantine* of every case of contagious disease which occurs in the community." The italics are our own. But even if the intimation of Mr. Justice were correct, that exclusion of healthy persons was not strictly the exercise of a "quarantine" power, it would yet be a police power and a health law, which we have already

seen, is declared by the U. S. Supreme Court to be within the control of the States, as an ordinary sanitary law.

Indeed, the only relevant qnestion in this controversy is as to the

IV.

REASONABLENESS OF THE STATE STATUTE.

This presents the question as to whether the clause of the Louisiana Statute is a bona-fide exercise of the police power. If it is, your Honors must maintain its constitutionality. If it is not, and is a mere subterfuge to shut out commerce, or to raise revenue, or to regulate intercourse with foreign nations, it is an abuse of the police power and should not be maintained. Our opponents have entered into a long argument, to show that the power of temporary exclusion might be grossly abused and perverted to subserve other purposes than the protection of the health of the State. While advancing this test of the legality of the State Statutes, they at last fall back upon the reasoning that the power conferred by the Act might be abused: 1st) By the Board unnecessarily and without proper cause declaring a parish, city or other portion of the State as being infected, when it really was not; 2d) By declaring a particular disease infectious, when it really was not so; 3d) By wrongfully declaring that the admission of

persons would spread the disease, when in fact their admission would have no such effect, and by this wrongful and arbitrary use of the police power could erect barriers against commerce, for other ulterior purposes than the *bona-fide* preservation of the public health.

We shall not follow further their lengthy disputation in this regard. It is a sufficient answer to these imaginary fears, that if there should be such an abuse of the power, the Courts would invalidate their actions, as the Supreme Court of the United States did the Statutes of Missouri in the cattle cases, and the laws of New York and California, taxing passengers, as well as the laws of other States, which, under the guise of police laws, really sought to subserve other purposes, by unconstitutional methods. If the law be reasonable, it must stand. Parker and Worthington's Public Health and Safety, Secs. 60, 61 and 62, p. 68 et seq., and a vast multitude of authorities cited in the notes thereto, from the States and U. S. Courts, all establish the principle that if the law be a *bona-fide reasonable exercise of the police power, for the evident purpose of protecting the public health*, it is a valid exercise of the police power, and must be maintained. See also Prentice on Police Powers, p. 105, where the whole subject is treated under the heading of Health and Quarantine laws. Although we have not been able to find authorities just in point, sustaining a law similar to our own, as our situation is peculiarly *sui generis*, yet we

have found laws, closely similar in some respects, have been maintained. For instance, laws requiring all imported rags, whether coming from infected ports or not, to be detained and disinfected, have been uniformly sustained in many cases. A Statute of Michigan requiring all persons coming into the State from the North to be detained for days and their effects disinfected, although they came from uninfected portions of Canada, were in perfect health, and had proper certificates of health, although smallpox prevailed in a small portion of Canada, was sustained by the Federal Courts as a reasonable quarantine regulation ; so, in 1894, the U. S. Secretary of the Treasury suspended the entire introduction of immigrants into the United States from the whole of France, because in some limited portions of that country cholera prevailed, and although these portions were strictly quarantined by the French government. All these acts were done in the exercise of the quarantine power. The Atlanta conference of Boards of Health of the Gulf and South Atlantic States, a body composed of the most enlightened and scientific sanitarians, recommended that, in case of the breaking out of an epidemic of contagious disease in a given locality, the locality should be depopulated as rapidly as possible, in order to prevent the spread of the disease. How much more necessary is it then to prevent fresh material from being imported into an infected and quarantined locality, and thereby stop fresh fuel from being added to the

flames of a consuming epidemic and thus extending its prevalence, and augmenting the circle of its devastating and desolating force? We cannot better close this brief than by transcribing the able opinion of the judge of the District Court:

"The petition filed in this case does not negative or put at issue the fact that the City of New Orleans and the adjacent territory was infected with a fever, believed by many to be yellow fever, in the summer of 1898, but the plaintiff alleges, in substance, that one of its vessels, engaged in foreign commerce, bound for the port of New Orleans, with a clean bill of health, from a non-infected port, having on board several hundred healthy persons who had taken passage for said port of New Orleans, was stopped by order of the Board of Health of Louisiana and prohibited from landing said passengers either in New Orleans or within a hundred miles of said city; and it is claimed that said action was injurious to plaintiff, and infringed upon the authority vested by the Constitution of the United States in the Federal Government."

The question is whether the petition discloses a cause of action. One of the paragraphs of Section 8, of Act 192 of '88, reads as follows:

"The State Board of Health may, in its discretion, prohibit the introduction, into any infected district in the State, (of) persons acclimated, unacclimated or said to be immune, when, in its judgment, the introduction of such persons would

add to or increase the prevalence of the disease."

There is no doubt, therefore, that the Board of Health had the authority to do what was done if the State could confer that authority. The power to establish quarantine is not confined upon the Federal Government by any specific grant in the Constitution, nor is the exercise of that power prohibited to the States; hence, in the language of the 10th Amendment, it is "reserved to the States, respectively, or to the people," and if any like authority exists in the government of the United States it must be derived by implication — as necessary or appropriate to the exercise of such authority as is specifically granted. But, as the government of the United States has not, under a claim to such implied authority, enacted any quarantine law of general application, except in the way of affirmance of existing State laws, the effect of such a law, if enacted, need not be here considered, since it will hardly be denied, that in quarantine matters — unlike regulations of commerce — the silence of Congress at least leaves the field free to State legislation, even should it be contended that the voice of the States could be silenced by the action of Congress.

The power to regulate commerce is vested in Congress by specific grant, and is exclusive — and it is well settled that — save as to matters of small, local concern, the silence of Congress and its failure to impose restrictions upon commerce, means that the States are to impose none. The exercise

by the States, however, of the power to maintain quarantine — necessarily, at times, involves an interference, to a greater or less degree, with the operations of commerce, and they have been frequently called on to harmonize these powers coexisting in the State and Federal Government in cases where it was plain that they had reached the point of conflict. The question thus presented being a federal one could be determined in last resort only by the Supreme Court of the United States, and that august tribunal, in an unbroken line of decisions, has held that laws enacted by a State in the legitimate exercise of the authority inherent in and retained by such State upon the creation of the Federal Government to establish and maintain quarantine, may be enforced even to the extent of operating incidently to effect, obstruct and hinder commerce without impinging upon the exclusive authority to regulate commerce which is vested by the Constitution in the Congress.

That the rule thus established is intended to accord to the States the liberal use of their authority in the premises is fairly illustrated by the fact that not only are they permitted to hold in quarantine and inspect and disinfect vessels engaged in interstate and foreign commerce, and to cut off communication, whether commercial or otherwise, between the territory within their jurisdiction and other States and countries from which, exercising their discretion and judgment, they believe that disease may be imported, but they are

also permitted to impose upon commerce itself the burden of maintaining the quarantines which they establish and to collect from vessels showing clean bills of health, and sailing from and bound to non-infected ports, charges which are held to be charges for services rendered to such vessels, facilitating their operations as vehicles of commerce, and which are devoted to the maintenance of quarantine, the reason for the existence of which is to be found rather in the obligations of the State government to protect their citizens from disease than in any right or obligation vested or resting on them to interfere with vehicles of commerce or their facilitation or otherwise.

In referring to quarantine regulations, such as these, the Supreme Court of the United States, through Justice Miller, has said : " Whether these precautions were judicious or not, this Court can not inquire. They are a part of and inherent in any system of quarantine." 118 U. S. 455. And it has also been held that it would be assumed that wharfage charges were not in excess of what was necessary to maintain the wharves. It is true that in Railroad Company vs. Husen, the Court did find that a Statute purporting to have been passed in the exercise of the police power of the State of Missouri exceeded justifiable limits. This, however, was the exception, and I take it that the rule is that the States will be presumed to have exercised wisely the discretion vested in them in such matters, and that in quarantine matters, unless the

legislations adopted are manifestly unreasonable and exceed the requirements of quarantine, they will not be interfered with.

The question presented here is, then, narrowed down to this. Is it a reasonable and legitimate quarantine regulation which does not impinge upon the authority vested exclusively in Congress to regulate commerce for a State Board of Health, acting under State authority, to exclude from an infected district persons who, in its judgment, "would add to or increase the prevalence of the disease?" And this question, I think, should be answered in the affirmative.

No one would question the right of the local authorities to prohibit the introduction into a town or city, in which a conflagration was raging, of material calculated to feed the flames or increase the danger to life, whether it be gunpowder, oil, or even such ordinarily harmless stuff as shavings or cordwood. And it seems to me, if a clean ship, with healthy passengers, bound from one healthy port to another port, can be charged under quarantine regulations for inspection upon the ground that it is a service rendered to such ship as a vehicle of commerce, *a fortiori* can the exclusion of healthy persons from an infected place be justified upon the ground, not only that it prevents the spread of disease among those whom the State is bound to protect, but in the name of humanity that it is extending protection to the stranger at the gates of the State from disease and death, and

is the rightful and legitimate exercise of a police power which has never been surrendered ?

For these reasons, the exception should be maintained and this suit dismissed at plaintiff's costs.

We also invite your Honors' especial and careful attention to the opinion of the Honorable Supreme Court of Louisiana, in which the whole case is fully and ably reasoned and argued, to be found on pages 12 et seq. of the Transcript.

We respectfully submit that the judgment of the Lower Court should be sustained by your Hono.s, and plaintiff's petition be dismissed as containing no cause of action.

F. C. ZACHARIE,

Attorney for Defendants in Error.

FILED
OCT 30 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 50.

COMPAGNIE FRANCAISE, ETC., PLAINTIFF IN ERROR,

vs.

STATE BOARD OF HEALTH OF LOUISIANA ET AL

The following references to United States statutes requiring United States officers to observe, aid, and assist in the execution of State laws of quarantine and health:

Act approved February 25, 1799, sec. III, chap. 12, p. 619, 1st vol. U. S. Statutes at Large 1789–1799, sections of act 1 and 2.

Tit. LVIII, p. 931, Revised Statutes of the U. S., 2d edit., 1789–1877, sections 4792 and 4793.

are respectfully submitted.

F. C. ZACHARIE,
Of Counsel for Defendant in Error.